Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Larry Craigmyle,
Petitioner,

v

United States Government,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Larry Craigmyle, Petitioner
115 Vine Street
Bono, AR 72416
(870) 934-1554

QUESTIONS PRESENTED

1.
Is it a 'harmless error' or does "Due Process" of the Fifth and Fourteenth Amendments to the United States of America Constitution guarantee each and every count of my complaint is directly and exactly considered based on its merits?

2.
Should a complaint that contains (2) two counts of medical malpractice, (2) two counts of violations of civil rights of Title 42 U.S.C. § 1983 and (4) four counts of violation of the Title 18 U.S.C. § 1964 - Rico Act and Title 18 U.S.C. § 1035 - false statements relating to health care matters, be summarily dismissed based solely on the accrual date of Count One of the Medical Malpractice and Civil Rights complaint?

3.
Does "Due Process" of the Fifth and Fourteenth Amendments of the United States of America Constitution guarantee Count Two of the remaining Medical Malpractice and Civil Right complaint is directly and exactly considered based on its merits?

4.
Does Summary Judgment violate the "Due Process" clause of the Fifth and Fourteenth Amendments of the United States of America Constitution if granted before "Discovery" was allowed to complete?

5.
Should fear/anxiety of malicious prosecution under Title 42 U.S.C. § 1983 have influence as to whether or not a complaint should be filed and have an influence upon the timing of that filing?

6.
Does the United States Court of Appeals for the 8th Circuit PER CURIAM opinion in Ingram v. United States, 443 F.3d 956, 961-

QUESTIONS PRESENTED – Continued

62 (8th Cir. 2006) and Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990) in referencing "reasonable diligence" and date "actually knew" cause and existence of injury conflict with the "knew or should have known" medical malpractice standard of review of previous opinions of this Court or other United States Court of Appeals Circuits?

6.1
Did the United States Court of Appeals for the 8th Circuit violate the spirit and the letter of it's decision in Ingram v. United States, 443 F.3d 956, 961-62 (8th Cir. 2006) and Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990) in referencing "reasonable diligence" and date "actually knew" cause and existence of injury?

7.
Did the Federal Torts Claim Act, Title 28 U.S.C. § 1346(b)(1), give control in legal matters, but not procedural matters, to the place where the act or omission occurred, Tennessee?

7.1.
Is Tennessee Code Annotated 29-26-116 the controlling statute?

7.2
Should the accrual date be the date of discovery of fraud and concealment and extending for a period of one year as defined in Tennessee Code Annotated 29-26-116?

7.3
Should the accrual date be the discovery date of medical negligent acts or omission and extending for a period of three years as defined in Tennessee Code Annotated 29-26-116(a)(3)?

7.4
Should the Tennessee Rules of Evidence be followed?

QUESTIONS PRESENTED – Continued

8.
Should an extension of the accrual date be granted because of the psychiatric nature of the injuries?

9.
Did the United States Court of Appeals for the 8th Circuit violate the spirit and the letter of it's decision in Arp V. AON/Combined Ins. Co., No. 01-3147, page 5 (8th Cir. 2002) when the Court said, "the evidence, viewed in the light most favorable to the nonmoving party" and must afford the Appellant the benefit of all of the reasonable inferences that can be drawn from the facts in summary judgment cases in the appeal I filed with the United States Court of Appeals for the 8th Circuit?

9.1
Did the United States Court of Appeals for the 8th Circuit violate the spirit and the letter of it's decision in Carroll v. Gulf Ins. Co., 886 F.2d 1071, 1074 (8th Circuit 1989) when it said ("[A] trial court errs when, in deciding a summary judgment motion, it takes it upon itself to weigh conflicting evidence and to resolve the issue based on the evidence.") in the appeal I filed with the United States Court of Appeals for the 8th Circuit?

10.
Does the Constitution of the United States of America, the Amendment thereof or the reasonable inferences that are contained within or that can be drawn from have a statute of limitations?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	iv
Table of Authorities	v
Opinions Below	1
Statement of Jurisdiction	2
Constitutional, Federal and State Provisions	3
Statement of the Case	8
Reasons for Granting the Petition	19
Conclusion	20
Signature Line	20

Appendix

United States Court of Appeals For the Eighth Circuit Per Curiam Order Denying Reversal or Summary Judgment Filed July 12, 2006 App. 1

United States Court of Appeals for the Eighth Circuit Denying Petition for Rehearing en banc and Denying the Petition for Rehearing by the Panel dated August 16, 2006 App. 3

In The United States District Court, Eastern District of Arkansas, Jonesboro Division Judgment Granting Summary Judgment in Favor of the Defendant April 5, 2005 App. 4

In The United States District Court, Eastern District of Arkansas, Jonesboro Division Order Granting Defendant's Motion for Summary Judgment April 5, 2005 App. 5

TABLE OF AUTHORITIES

	Page
Constitutional Provisions:	
Constitution of the United States of America Article I, Section 1.	**2**
Constitution of the United States of America Article II, Section 1, Clause 1.	**2**
Constitution of the United States of America Article III, Section 1.	**2**
Constitution of the United States of America Amendment I.	**2**
Constitution of the United States of America Amendment V.	**2**
Constitution of the United States of America Amendment X.	**3**
Constitution of the United States of America Amendment XIV. Section 1.	**3**
Cases:	
Arp V. AON/Combined Ins. Co., No. 01-3147, page 5 (8th Cir. 2002)	**12**
Carroll v. Gulf Ins. Co., 886 F.2d 1071, 1074 (8th Circuit 1989)	**10**
Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231, 79 S. Ct. 760, 3 L.Ed.2d 770 (1959)	**10**

TABLE OF AUTHORITIES - Continued

	Page
Holmberg v. Armbrecht, 327 U.S. 392, 397	13
Ingram v. United States, 443 F.3d 956, 961-62 (8th Cir. 2006)	16
Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990)	17
Richardson v. Perales, 402 U.S. 389, (1971)	12
United States v. Olson et al. No. 04-759-2005, Pp. 2-5.	8
Statutes:	
Title 18 U.S.C. § 1035. RICO Act. False statements relating to health care matters.	passim
Title 18 U.S.C. § 1964(d), RICO Act. Civil remedies	passim
Title 28 U.S.C. § 1346(b)(1). United States as Defendant	passim
Title 38 U.S.C. § 1710(a)(1)	4, 8, 9
Title 38 U.S.C. § 1710(a)(2)(A)	4, 8, 9
Title 38 U.S.C. § 1701(5)(a)(i)	4, 8, 9
Title 38 U.S.C. § 1701(6)	5, 8, 9
Title 42 U.S.C. § 1983 Civil action for deprivation of rights.	passim

TABLE OF AUTHORITIES - Continued

	Page
Tennessee Code Annotated 29-26-116(a)(3). Statute of Limitations.	**5,11,12,15**
Tennessee Code Annotated 32-11-103(3) Definitions.	**5, 8, 9**
Tennessee Code Annotated 32-11-103(5) Definitions.	**5, 8, 9**
Tennessee Code Annotated 33-2-402(5). Part definitions.	**6, 8, 9**
Tennessee Code Annotated 33-2-402(8). Part definitions.	**6, 8, 9**
Tennessee Code Annotated 63-1-102(2). Practice of the healing arts	**6, 8, 9**
Tennessee Code Annotated 63-6-204(a)(1) "Practice of medicine" defined.	**6, 8, 9**
Tennessee Rules of Evidence – Article VIII. Hearsay	
Rule 801(a). Definitions.	**6, 7, 10,11**
Rule 801(b). Definitions.	**6, 7, 10,11**
Rule 801(c). Definitions.	**6, 7, 10,11**
Rule 802. Hearsay rule.	**7, 10, 11**
Rule 803(3). Hearsay exceptions.	**7, 10, 11**
Rules:	
United States Supreme Court Rule 10(a)	**7, 19**
United States Supreme Court Rule 10(c)	**7, 19**

PETITION FOR WRIT OF CERTIORARI

Larry Craigmyle respectfully petitions this Court for a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered on August 16, 2006 in this case.

OPINIONS BELOW

The United States Court of Appeals for the 8th Circuit on July 12, 2006 affirmed the adverse Summary Judgment of the United States District Court, Eastern District of Arkansas, Jonesboro Division. The opinion is reprinted in the Appendix hereto at Appendix 1-2.

The United States Court of Appeals for the 8th Circuit on August 16, 2006 denied the petition for rehearing. The opinion is reprinted in the Appendix hereto at Appendix 3.

STATEMENT OF JURISDICTION

Jurisdiction is proper over this writ pursuant to Title 28 U.S.C. § 1254(1) because it is an appeal from a final decision of the United States Court of Appeals for the Eighth Circuit and is filed within 90 days of the Court of Appeal's denial for rehearing. Further, the United States Court of Appeals has decided an important question of federal law, which in effect has eroded deep-rooted constitutional guarantees that must be addressed by this court.

CONSTITUTIONAL, FEDERAL & STATE PROVISIONS

Constitution of the United States of America
Article I, Section 1.
All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Constitution of the United States of America
Article II, Section 1, Clause 1.
The executive Power shall be vested in a President of the United States of America.

Constitution of the United States of America
Article III, Section 1.
The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Constitution of the United States of America
Amendment I.
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States of America
Amendment V.
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

Constitution of the United States of America
Amendment X.
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Constitution of the United States of America
Amendment XIV.
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U.S.C. § 1035, RICO Act.
Section 1035. False statements relating to health care matters
(a) Whoever, in any matter involving a health care benefit program, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or (2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.

Title 18 U.S.C. § 1964, RICO Act.
Section 1964. Civil remedies
(d) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any

appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

Title 28 U.S.C. § 1346(b)(1)
Sec. 1346. United States as defendant.
(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Title 38 U.S.C. § 1710(a)(1)
The Secretary (subject to paragraph (4)) shall furnish hospital care and medical services, and may furnish nursing home care, which the Secretary determines to be needed to any veteran –
38 U.S.C. § 1710(a)(2)(A)
who has a compensable service-connected disability rated less than 50 percent.
38 U.S.C. § 1701(5)(a)(i)
The term "hospital care" includes – (A) (i) medical services rendered in the course of the hospitalization of any veteran

38 U.S.C. § 1701(6)
The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services

Title 42 U.S.C. § 1983.
United States Code TITLE 42 - Sec. 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Tennessee Code Annotated 29-26-116. Statute of Limitations.
Tennessee Code Annotated section 29-26-116(a)(3) provides that: [i]n no event shall any such action be brought more than three (3) years after the date on which the negligent act or omission occurred except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after discovery that the cause of action exists.

Tennessee Code Annotated 32-11-103 Definitions.
(3) "Health care provider," "health care facility" or "health facility" means a person, facility or institution licensed or authorized to provide health or medical care;
(5) "Medical care" includes any procedure or treatment rendered by a physician or health care provider designed to diagnose, assess or treat a disease, illness or injury. These include, but are not

limited to: surgery; drugs; transfusions; mechanical ventilation; dialysis; cardiopulmonary resuscitation; artificial or forced feeding of nourishment, hydration or other basic nutrients, regardless of the method used; radiation therapy; or any other medical act designed for diagnosis, assessment or treatment or to sustain, restore or supplant vital body function

Tennessee Code Annotated 33-2-402. Part definitions.
(5) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;
(8) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, or developmental disabilities, and includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, counseling, case coordination, or supervision of persons with mental illness, serious emotional disturbance, or developmental disabilities.

Tennessee Code Annotated 63-1-102.
(2) "Practice of the healing arts" means offering or undertaking to diagnose, treat, operate on, or prescribe for any human pain, injury, disease, deformity, or physical or mental condition. The practice of acupuncture is hereby declared to be included within the definition of "practice of the healing arts" as defined by this section.

Tennessee Code Annotated 63-6-204 "Practice of medicine" defined.
(a)(1) Any person shall be regarded as practicing medicine, within the meaning of this chapter, who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another.

Tennessee Rules of Evidence - ARTICLE VIII. HEARSAY
Rule 801. Definitions. —The following definitions apply under this article:

(a) Statement. —A "statement"is (1) an oral or written assertion or (2) nonverbal conduct of a person if it is intended by the person as an assertion.
(b) Declarant. —A "declarant"is a person who makes a statement.
(c) Hearsay. —"Hearsay"is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
Rule 802. Hearsay rule. —Hearsay is not admissible except as provided by these rules or otherwise by law.
Rule 803. Hearsay exceptions. —The following are not excluded by the hearsay rule: (3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

United States Supreme Court Rule 10. Considerations Governing Review on Certiorari.
(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

STATEMENT OF THE CASE

United States v. Olson et al. No. 04-759-2005. Held: Under § 1346(b)(1), the United States waives sovereign immunity only where local law would make a "private person" liable in tort, not where local law would make "a state or municipal entity" liable.

The complaint filed in United States District, Eastern District of Arkansas, Jonesboro Division contained (2) two counts of medical malpractice and (2) two counts of civil rights violations.

The (2) two counts of medical malpractice are described in Title 38 U.S.C. § 1710(a)(1), Title 38 U.S.C. § 1710(a)(2)(A), Title 38 U.S.C. § 1701(5)(a)(i), Title 38 U.S.C. § 1701(6), Tennessee Code Annotated sections 63-6-204(a)(1), 32-11-103(3), 32-11-103(5), 33-2-402(5), 33-2-402(8) and 63-1-102(2).

Count (1) One of the medical malpractice complaint was in reference to a condition described in DSM-IV and assigned an ICD-9-CM code of 296.xx.

Count (2) Two of the medical malpractice complaint was in reference to a condition described in DSM-IV and assigned an ICD-9-CM code of 293.83.

The (2) two counts of civil rights violations are described in Title 42 U.S.C. § 1983 pertaining to deprivation of any rights secured by the Constitution and laws for failing to perform a diagnosis.

DSM-IV and ICD-9-CM code of 296.xx

The VA did not do a diagnosis or medical exam as required by Title 38 U.S.C. § 1701(6), Tennessee Code Annotated 63-6-204(a)(1), Tennessee Code Annotated 32-11-103(3), Tennessee Code Annotated 32-11-103(5), Tennessee Code Annotated 33-2-

402(8), and Tennessee Code Annotated 63-1-102(2) and described in DSM-IV or give tests recommended by psychologists such as MMPI, MMPI II, MCMI III, ISS, SRMI, or YMRS, but did prescribe medication for a medical condition described in DSM-IV and assigned an ICD-9-CM code of 296.xx that I did not have violating Title 38 U.S.C. § 1710(a)(1), Title 38 U.S.C. § 1710(a)(2)(A), Title 38 U.S.C. § 1701(5)(a)(i) and Title 38 U.S.C. § 1701(6), also violating Tennessee Code Annotated sections 63-6-204(a)(1), 32-11-103(3), 32-11-103(5), 33-2-402(5), 33-2-402(8), and 63-1-102(2), also violating Title 42 U.S.C. § 1983 and the "due process" clause of the Fifth and Fourteenth Amendments of the United States of America Constitution.

DSM-IV and ICD-9-CM code of 293.83

The VA did not do a diagnosis or medical exam as required by Title 38 U.S.C. § 1701(6), Tennessee Code Annotated 63-6-204(a)(1), Tennessee Code Annotated 32-11-103(3), Tennessee Code Annotated 32-11-103(5), Tennessee Code Annotated 33-2-402(8), and Tennessee Code Annotated 63-1-102(2) and described in DSM-IV or give tests recommended by psychologists such as MMPI, MMPI II, MCMI III, ISS, SRMI or YMRS, and did not prescribe medication for a medical condition described in DSM-IV and assigned an ICD-9-CM code of 293.83 that I did have violating Title 38 U.S.C. § 1710(a)(1), Title 38 U.S.C. § 1710(a)(2)(A), Title 38 U.S.C. § 1701(5)(a)(i) and Title 38 U.S.C. § 1701(6), also violating Tennessee Code Annotated sections 63-6-204(a)(1), 32-11-103(3), 32-11-103(5), 33-2-402(5), 33-2-402(8), and 63-1-102(2), also violating Title 42 U.S.C. § 1983 and the "due process" clause of the Fifth and Fourteenth Amendments of the United States of America Constitution.

I did not bring any medical records to the VA Hospital. I did not sign a waiver giving up my right to an accurate diagnosis.

The defendant was granted Summary Judgment pertaining to accrual date on Count (1) One of the medical malpractice complaint concerning DSM-IV, ICD-9-CM code 296.xx in the United States District Court, Eastern District of Arkansas, Jonesboro Division, April 5, 2005.

Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231, 79 S.Ct. 760, 3 L.Ed.2d 770 (United States Supreme Court, 1959) did not allow the pleading of the statute of limitations as an affirmation defense.

Carroll v. Gulf Ins. Co., 886 F.2d 1071, 1074 (8th Circuit 1989). Held: ("[A] trial court errs when, in deciding a summary judgment motion, it takes it upon itself to weigh conflicting evidence and to resolve the issue based on the evidence.").

The Initial APPELLANTS BRIEF IN SUPPORT OF REVIEW AND REVERSAL OF SUMMARY JUDGMENT was filed with the United States Court of Appeals for the Eighth Circuit in St. Louis on May 31, 2005 based on the hearsay nature of the statement as outlined in Tennessee Rules of Evidence – ARTICLE VIII. HEARSAY, Rules 801(a), 801(b), 801(c), 802 and 803(3) of a then existing mental or emotional condition concerning the accrual date of Count (1) One of the medical malpractice complaint and errors and omissions of "due process" of the Fifth and Fourteenth Amendments of the United States of American Constitution.

The APPELLANT'S 2nd AND FINAL BRIEF IN SUPPORT OF REVIEW AND REVERSAL OF SUMMARY JUDGMENT was filed with the United States Court of Appeals for the Eighth Circuit in St. Louis on June 30, 2005 based on the discovery of

new evidence concerning fraud and concealment as outlined in Title 18 U.S.C. § 1035 RICO Act, False statements relating to health care matters and Tennessee Code Annotated section 29-26-116(a)(3).

Hearsay Statement

The Federal Tort Claim Act is silent concerning Hearsay Rules of Evidence. The Constitution of the United States of America Amendment X reserves that power to the States respectively, or to the people, State of Tennessee. Title 28 U.S.C. § 1346(b)(1) gives authority to the place where the act or omission occurred, State of Tennessee.

The hearsay statement of an existing mental condition concerning the accrual date is not admissible unless it relates to the execution, revocation, identification, or terms of declarant's will under Tennessee Rules of Evidence – ARTICLE VIII. HEARSAY, Rules 801(a), 801(b), 801(c), 802 and 803(3) of a then existing mental or emotional condition. Dr Paul B Hill, MD, psychiatrist in private practice, medical record of me does not document the hearsay evidence contained in the Summary Judgment. Neither Dr Hill nor I are listed with the Federal Security Agency, National Office of Vital Statistics as being dead.

I would have been premature and improper to file a complaint under 'preponderance of the evidence' or 'probable cause' with what appeared to be the scant hearsay evidence and I had fear of malicious prosecution under Title 42 U.S.C. § 1983. Fear of malicious prosecution is part of the "Checks and Balances" of our court system. Condemned if you do, condemned if you don't. Where's the justice in that? Merits of the case would not have been good if I had filed any sooner because Dr Hill had not made his conclusive decision concerning my condition.

Richardson v. Perales, 402 U.S. 389, (1971). Held: (" Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.").

I had substantial evidence after receiving and reviewing Dr Hill's medical records and the VA's medical records of me and filed the Federal Tort Claim on June 16, 2002. The defendant chose an accrual date of July 29, 1999 based on hearsay evidence. Tennessee Code Annotated section 29-26-116(a)(3) allows (3) three years to file the Federal Tort Claim. The Federal Tort Claim was narrowly filed within the (3) three year Statute of Limitations.

Arp V. AON/Combined Ins. Co., No. 01-3147, page 5 (8th Cir. 2002). Held: "the evidence, viewed in the light most favorable to the nonmoving party" and must afford the Appellant the benefit of all of the reasonable inferences that can be drawn from the facts in summary judgment cases?

I believe it is a violate the spirit and the letter of the United States Court of Appeals for the 8th Circuit decision in Arp V. AON/Combined Ins. Co., No. 01-3147, page 5 (8th Cir. 2002) to not vacant the Summary Judgment granted by the United States District Court for the Eastern District of Arkansas, Jonesboro Division.

New Evidence Discovered of Fraud and Concealment

The Federal Tort Claim Act is silent concerning medical malpractice complaints that have evidence of fraud and concealment. The Constitution of the United States of America Amendment X reserves that power to the States respectively, or to the people of the State of Tennessee. Title 28 U.S.C. § 1346(b)(1) gives authority to the place where the act or omission occurred, State of Tennessee.

Defendant's Motion for Summary Judgment was Granted before Discovery was allowed to completed. Subsequent discovery found at least (4) four Counts of Fraud and Concealment.

There is substantial evidence, Richardson v. Perales, 402 U.S. 389, (1971), of Fraud and Concealment violations of Title 18 U.S.C. § 1035, RICO Act concerning false statements relating to health care matters.

Holmberg v. Armbrecht, 327 U. S. 392, 397, Held: "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered."

On March 10, 1997 I had outpatient surgery at the VA hospital in Memphis. I was told before surgery that it would take about an hour and I could go home around noon. When I woke up a young man was with me and he identified himself as a psychiatrist. He said that as I was being brought out of the anesthesia I being flailing my body and the operating room personnel had to physically restrain me which explains the bruises I had and that I broke the operating room table. The doctor then put me back under the anesthesia, which explains why I didn't get out of the hospital until nearly five that afternoon.
From the Hospital records of the operation:

1) **Anesthesia Begin: March 10, 1997 at 07:42am**
2) **Operation Begin: March 10, 1997 at 08:25am**
3) **Operation Ends: March 10, 1997 at 09:50am**
4) **Anesthesia Ends: March 10, 1997 at 11:10am**

The VA continued to prescribe lithium for me. It wasn't until I left the VA and Dr Paul B. Hill MD, a psychiatrist in private practice, became my doctor and told me on November 11, 2001 that lithium caused the seizures. The VA intentionally concealed this information. I signed the Federal Tort Claim on June 16, 2002, within the Statute of Limitations.

The VA could have told me the lithium was causing the seizures but they chose not to. The VA intentionally concealed from me that lithium was causing the seizures I was having. The VA Doctors were protecting their pride and keeping their medical malpractice insurance from increasing.

Arithmetic indicates that the anesthesia ended one hour and twenty minutes after the operation ended. The anesthesia was extended well beyond the end of the operation because I had a seizure as described above and the anesthesia was the only means the VA had to control the flailing of my body. The operation report, VA medical record case # 40185, signed by Dr. Larry Duberstein M.D. states: (1) Operation Ends: March 10, 1997 at 09:50am and (2) Anesthesia Ends: March 10, 1997 at 11:10am

There are (4) four counts of Fraud and Concealment violations of Title 18 U.S.C. § 1035, RICO Act concerning false statements relating to health care matters:

Count (1) One - False statements relating to health care matters: "The patient was awakened and extubated from anesthesia in the operating room without difficulty."

Count (2) Two - False statements relating to health care matters: "There were no intraoperative complications."

Count (3) Three - False statements relating to health care matters: "The patient tolerated the procedure well and was transferred to the recovery room and then to the floor in stable and satisfactory condition."

Count (4) Four- False statements relating to health care matters: The VA prescribed lithium on the first visit, i.e. a "diagnosis" was performed. The Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition, the "psychiatrists bible", more commonly known as DSM-IV required a minimum of three or four visit to arrive at an initial diagnosis.

Tennessee Code Annotated 29-26-116(a)(3) tolls the Statute of Limitation for cases involving fraud and concealment from date of discovery and extending it for a period one year. I think I have a substantial case as the VA committed fraud and concealment and the accrual date does not begin to run until the discovery of the injury is possible and extends for one year. I knew of the fraud and concealment on June 30, 2005 as documented in APPELLANT'S 2nd AND FINAL BRIEF IN SUPPORT OF REVIEW AND REVERSAL OF SUMMARY JUDGMENT filed with United States Court of Appeals for the Eighth Circuit. The VA's fraud and concealment is an obscene breach of trust.

Due Process clause of the Fifth and Fourteenth Amendments

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (2) Two of medical malpractice in reference to a condition described in DSM-IV and assigned an ICD-9-CM code of 293.83.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (1) One in a condition described in DSM-IV and assigned an ICD-9-CM code of 296.xx in reference to Title 42 U.S.C. § 1983, civil action for deprivation of rights.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (2) Two in a condition described in DSM-IV and assigned an ICD-9-CM code of 293.83 in reference to Title 42 U.S.C. § 1983, civil action for deprivation of rights.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (1) One in reference to Title 18 U.S.C. § 1035, RICO Act false statements relating to health care matters.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (2) Two in reference to Title 18 U.S.C. § 1035, RICO Act false statements relating to health care matters.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (3) Three in reference to Title 18 U.S.C. § 1035, RICO Act false statements relating to health care matters.

The Fifth and Fourteenth Amendments to the United States of America Constitution due process clause was ignored by the defendant and the Court did not rule on Count (4) Four in reference to Title 18 U.S.C. § 1035, RICO Act false statements relating to health care matters.

Petition for Rehearing
Reasonable Diligence and Actually Knew

A Petition for Rehearing was filed under Federal Rules of Appellate Procedure 40 with the United States Court of Appeals for the Eighth Circuit in St Louis on July 21, 2006.

See T.L. ex rel. Ingram v. United States, 443 F.3d 956, 961-62 (8th Cir 2006). Held: (medical malpractice claim against United States is jurisdictionally barred unless administrative claim was filed with appropriate agency within two years after plaintiff

actually knew, or in exercise of reasonable diligence should have know, cause and existence of his injury);Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990) (standard of review)

Reasonable diligence was exercised as Dr Hill set the appointments at reasonable intervals and for reasonable periods of time. I kept every appointment with Dr Hill, MD, psychiatrist in private practice, and was never late.

I actually knew the cause and existence of injury based on a series of events:

a) **November 7, 2001. I had two appointments. The first appointment was with an attorney in Memphis. He stated I needed to know that I should not have been prescribed lithium. The second appointment was with my doctor and he said, "Lithium should not have been prescribed". I knew the cause of the seizures, Lithium.**
b) **March 12, 2002. I had an appointment with Dr Hill. We discussed the medical malpractice case, Dr Hill told me to go get me some money, i.e. file a lawsuit, and I requested a copy of my medical records. I relied on Dr Paul B Hill, MD; psychiatrist in private practice to made his conclusive determination, there wasn't anything I could have done until the doctor's report was complete.**
c) **March 22, 2002. I wrote Dr Hill check number 1719 for a copy of my medical records in the amount of $35.00.**
d) **March 26, 2002. Dr Hill mailed my medical records. I reviewed the Medical records. I was a medical records specialist in the Army, served in 2 hospitals in Vietnam and received the Army Commendation Medal and the U.S. Army Vietnam Certificate of Achievement.**
e) **June 7, 2002. Receive a copy of my medical records from the VA Hospital in Memphis. The record seems to be incomplete. There are records missing when compared with the Patient Data Card listing appointment I had. I reviewed what the VA had sent.**

f) March 29, 2002 thru June 16, 2002. A review of Dr Hill's medical records of me removed all doubt from my mind and I conclusively knew bipolar was not the correct diagnosis, the VA had misdiagnosed me, there was hard evidence to support the Federal Tort Claim, would not be subject to a malicious prosecution charge, Title 42 U.S.C. § 1983, and led to me actually knowing on June 16, 2002 that there in fact was injury and the cause was the VA Hospital; Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990) (standard of review)

g) June 16, 2002. I actually knew of the cause and existence of my injury and wrote a Federal Tort Claim to the VA and signed it.

a) June 17, 2002. I mailed the Federal Tort Claim to the Dept. of VA in North Little, AR Certified Mail, Return Receipt Request.

i) June 19, 2002. The VA signed for the FTC.

The United States District Court of Appeals for the Eighth Circuit denied the Petition for Rehearing en banc and by the panel August 16, 2006.

Jurisdictional Statement of Previous Courts and Actions

The basis of jurisdiction of the Federal Tort Claim is Title 28 U.S.C. § 1346(b) and § 2671.

The basis of jurisdiction of the United States District Court is The Constitution of the United States of America, First Amendment and Title 28 U.S.C. § 1346(a) and § 1346(b)(1).

The basis of jurisdiction of the United States Court of Appeal is Title 28 U.S.C. § 1291, Title 28 U.S.C. § 2522 and Title 28 U.S.C. - Rules of Appellate Procedure Rule 4(a).

REASONS FOR GRANTING THE PETITION

The petition should be granted because the decision of the United States Court of Appeals for the Eighth Circuit, has decided important questions of Constitution, Federal and State Law that has not been, yet should be, settled by this court and conflicts with relevant decisions of this Court, United States Supreme Court Rule 10(a) and Rule 10(c).

To not permit any party in any case (civil or criminal), as a matter of law, to proceed with "due process" of the Fifth and Fourteenth Amendments of the United States of America Constitution, without any required showing of facts or circumstances that necessitate the need for openness erodes the fundamental and long standing constitutionally embedded presumption of fairness in judicial proceedings.

To exercise the truism of the Tenth Amendment of the United States of America Constitution the Federal Government is limited only to the powers it is granted in the Constitution and the states can fully exercise their reserved powers.

There is substantial evidence the Executive Branch of the United States of America Government is involved in Fraud and Concealment and could severely limit the people of this county to make rational decisions that constitute the very fabric of our society.

I read a book on World History in High School and learned of Napoleon Bonaparte and the French Revolution. Why did Napoleon go around conquering people/countries with armies instead of just telling people whom he was, what he stood for and what he wanted to do and let the people decide? It was because under Napoleonic Law a person was considered guilty until proven innocence. It remains me so much of the VA Hospital

Mental Health Clinic. Who's going to police the thought police? God help us all.

With added emphasis from Mr. Stripling's, Assistant United States Attorney, STATEMENT OF UNCONTESTED FACTS:

a) **"There was fault on the part of the VA in prescribing 900 mg of lithium per day.**

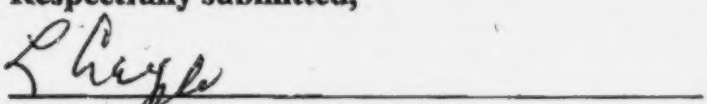
b) **"The VA did not diagnosis me".**

c) **"The doctors at the VA Hospital in Memphis failed to properly assess and treat the correct mental condition".**

CONCLUSION

Based on the foregoing, I respectfully ask that the Court grant a Writ of Certiorari regarding this matter.

Respectfully submitted,



Larry Craigmyle, Petitioner
115 Vine Street
Bono, AR 72416
(870) 034-1554

Appendix 1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-2150

Larry Craigmyle,	*
	*
Appellant,	*
	* **Appeal from the United States**
v.	* **District Court for the**
	* **Eastern District of Arkansas**
U. S. Government,	*
	* **[UNPUBLISHED]**
Appellee	*

Submitted: July 5, 2006
Filed: July 12, 2006

Before COLLOTON, BEAM, and HANSEN, Circuit Judges.

PER CURIAM.

Larry Craigmyle appeals the district court's[1] adverse grant of summary Judgment to the United States in this medical malpractice action brought under the Federal Tort Claim Act, 28 U.S.C. §§ 2671-80. Following our careful review, we affirm because Craigmyle's complaint allegations demonstrated that he knew, or in the exercise of reasonable diligence should have known, the cause and existence of his injury more than two years before he filed his administrative claim. See T.L. ex rel. Ingram v. United States, 443 F.3d 956, 961-62 (8th Cir 2006)(medical malpractice claim against United States is jurisdictionally

[1] The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

barred unless administrative claim was filed with appropriate agency with two years after plaintiff actually knew, or in exercise of reasonable diligence should have know, cause and existence of his injury);Osborn v. United States, 918 F.2d 724, 729-730 (8th Cir. 1990) (standard of review)

Accordingly, we affirm. See 8th Cir. R. 47B.

Appendix 3

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-2150

Larry Craigmyle,	*	
	*	
Appellant,	*	
	*	**Order Denying Petition for**
vs.	*	**Rehearing and for Rehearing**
	*	**En Banc**
U.S. Government,	*	
	*	
Appellee.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)

August 16, 2006

Order Entered at the Direction of the Court:
Michael E. Gans (signature)
Clerk, U.S. Court of Appeals, Eighth Circuit

Appendix 4

IN THE UNITED STATES DISTRICT COURT
EASTERN DIVISION OF ARKANSAS
JONESBORO DIVISION

LARRY CRAIGMYLE

V. **3:04CV00274 JMM**

U.S. GOVERNMENT

JUDGMENT

Pursuant to the Order entered on this date, Judgment is hereby entered in favor of the Defendant.

IT IS SO ORDERED this 5 day of April 2005.

(Signature)
James M. Moody
United States District Judge

Appendix 5

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LARRY CRAIGMYLE

V. **3:04CV00274 JMM**

U.S. GOVERNMENT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pending is the Government's Motion for Summary Judgment. The Government claims that Plaintiff's claims are barred by the applicable statute of limitations. Plaintiff has responded to this motion. For the reasons set forth below, the motion (Docket # 27) is GRANTED.

Standard for Summary Judgment

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds. Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56. The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met.

> **The inquiry is the threshold inquiry of determining whether there is a need for trail – whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor or either party.**

Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250(1986)

Appendix 6

The Eighth Circuit Court of Appeals has cautioned that summary judgment should be invoked carefully so that no person will be improperly deprived of a trial of disputed factual issues. *Inland Oil & Transport Co. v. United States*, 600 F.2d 725 (8th Cir. 1979), cert. denied, 444 U.S. 991 (1979). The Eighth Circuit set out the burden of the parties in connection with a summary judgment motion in *Counts v. M.K. Ferguson Co.*, 862 F.2d 1338 (8th Cir. 1988);

> **[T]he burden on the moving party for summary judgment is only to demonstrate, i.e., '[to] point out to the District Court,' that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.**

Id. At 1339, (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-274 (8th Cir. 1988) (citations omitted)(brackets in original)). Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248.

<u>Discussion of the Case</u>

Plaintiff contends in his Complaint that he was misdiagnosed by the V.A. Hospital in Memphis, TN with bipolar disorder and erroneously prescribed lithium for this disorder. Plaintiff claims that he did not suffer bipolar disorder and that lithium, the medication prescribed by the V.A. to treat him for bipolar

disorder, caused him damage both physically and financially. Plaintiff was diagnosed as bipolar at the V.A. on March 31, 1997 and continued receiving treatment at the V.A. until November 12, 1998. Plaintiff alleges that during his intake interview at the V.A. on March 31, 1997, he informed the interview that he had been previously diagnosed as bipolar and that he had been taking lithium. He informed the interviewer that "lithium was not doing any good . . . and that [his] situation had gotten worse." (Complaint at p. 103-04). The Complaint states, "[T]he intake interview clearly shows that the mental health nurse had doubts and asked for situations that would lead to a diagnosis of bipolar disorder and twice I clearly stated that no bipolar situation were apparent., i.e., that I was not bipolar. This should have been a "red flag" concerning my condition." (Complaint at p. 104).

Plaintiff begin seeing Dr. Paul Hill, a private psychiatrist, on July 9, 1999. Plaintiff alleges that during his first visit with Dr. Hill on July 29, 1999, the doctor expressed serious doubts as to whether Plaintiff's previous diagnosis of bipolar disorder was correct and stated that "if bipolar was the correct diagnosis it is "very, very mild.'" (Complaint at p. 107). Plaintiff claims that over two years later, on November 7, 2001, Dr. Hill stated unequivocally that lithium should not have been prescribed. Plaintiff filed his suit on June 16, 2002.

The Government argues that Plaintiff's claim for malpractice is barred by the two-year statute of limitation provided by 28 U.S.C. § 2401(b). This section states:

> A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriated Federal agency with two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b). The Government contends that based upon the facts alleged by Plaintiff in his Complaint Plaintiff was aware that he did not suffer from bipolar disorder at his intake interview with the V.A. on March 31, 1997. Therefore, his tort claim accrued on March 31, 1997 and he filed his Complaint outside the two-year statute of limitations. Moreover, if Plaintiff's claim did not accrue at that time, the Government contends that Plaintiff's claim undoubtedly accrued by July 29, 1999 when Plaintiff was told by Dr. Hill that he had doubts about Plaintiff's diagnosis of bipolar disorder. Again, Plaintiff filed his Complain outside the two-year statute of limitations.

Plaintiff argues, however, that he filed with the two-year statute of limitations because his claim did not accrue until November 7, 2001 the day that Dr. Hill stated that Plaintiff should never have been prescribed lithium. In other words, Plaintiff is alleging that November 7, 2001, the day in which he met with Dr. Hill and his attorney, was the first time he was aware that he was misdiagnosed and prescribed the wrong medication by the V.A. This was almost two years after Plaintiff began treatment with Dr. Hill, two years after Dr. Hill first expressed reservations about Plaintiff's diagnosis, three years since Plaintiff had last used lithium, and three years since he had last visited the V.A.

In *Kubrick v. U.S.*, the plaintiff, William Kubrick, suffered permanent hearing loss when a V.A. Hospital physician negligently treated him with the wrong medication. The plaintiff was aware of the injury immediately but was not aware of the negligence for more than two years. The Supreme Court reversed the Court of Appeals and found that the statute of limitations had run on Mr. Kubrick's tort claim. The Supreme Court reasoned:

> Kubrick need only have made inquiry among doctors with average training and experience in such matters to have discovered that he probably had a good cause of action. The difficulty is that it does not appear that Kubrick ever made any inquiry, although meanwhile he had consulted

several specialists about his loss of hearing and had been in possession of all the facts about the cause of his injury since January 1969. Furthermore, there is no reason to doubt that Dr. Soma, who in 1971 volunteered his opinion that Kubrick's treatment had been improper, would have had the same opinion had the plaintiff sought his judgment in 1969.

***U.S. v. Kubrick*, 444 U.S. 111, 123,100 S. Ct. 352, 360(1979).**

The facts of this instant case are somewhat similar. Plaintiff was at least on notice at the time of his first interview with the V.A. that he did not suffer from bipolar disorder and that his condition had worsened while he was taking lithium. He ended his relationship with the V.A. in 1998 and sought treatment from a private physician on July 29, 1999. Dr. Hill expressed doubt as to Plaintiff's diagnosis on his first visit. If Plaintiff had not been aware of a potential cause of action against the V.A. previously, he had a duty to inquire at the time Dr. Hill expressed his concerns on July 29, 1999. Just as the Supreme Court reasoned in *Kubrick*, there is not reason to doubt that Dr. Hill, who in 2001 volunteered his opinion that Plaintiff's treatment had been improper, would have had the same opinion had Plaintiff sought his judgment in 1999. "If he does ask and if the defendant has failed to live up to minimum standards of medical proficiency, the odds are that a competent doctor will so inform the plaintiff." Id at 122.

The Court finds that Plaintiff's cause of action accrued at the latest on July 29, 1999 when his physician expressed reservation about his previous diagnosis of bipolar disorder. Plaintiff did not file his complaint until June 16, 2002, more that two years later. Therefore, his claim for medical malpractice against the United States is barred by the two-year statute of limitations, 28 U.S.C. § 2401(b). The Government's Motion for Summary Judgment (Docket #27) is GRANTED. The Clerk is directed to close this case.

Appendix 10

IT IS SO ORDERED this 5 day of April 2005.

(Signature)
James M. Moody
United States District Judge